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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

Federal Communications Commission  
Office of Secretary

**Petition for Declaratory Ruling and )  
Rulemaking with Respect to )  
Defining, Predicting and Measuring ) RM No. 9345  
Grade B Intensity for Purposes of )  
the Satellite Home Viewer Act )**

**and**

**In the Matter of Definition of an )  
Over-the-Air Signal of Grade B ) RM No. 9335  
Intensity for Purposes of the )  
Satellite Home Viewer Act )**

**To: The Commission**

**REPLY COMMENTS  
OF THE  
SMALL CABLE BUSINESS ASSOCIATION**

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**September 21, 1998**

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The Small Cable Business Association ("SCBA") files these reply comments, in accordance with Section 1.405(b). The Commission has under consideration the Petitions for Rulemaking of the National Rural Telecommunications Cooperative ("NRTC") and Echostar Communications Corporation ("Echostar"). These petitions request the Commission, in essence, to rewrite certain provisions of the satellite carrier compulsory license. Because the requested action would directly conflict with the Commission's statutory mandate and Congress' intent, SCBA strongly urges the Commission to deny both petitions.

Several satellite carriers base their pleas on the wholly unsupported assertion that the potential loss of imported network signals into local markets -- provided illegally to subscribers -- raises compelling public interest issues. It does not. The fact that illegally

delivered signals must be shut off to comply with the law provides no meaningful basis for an inquiry based on the public interest. The petitions filed in these matters seek to give legitimacy to what remain illegal acts as defined by Congress. Consider the following argument:

Unless the Commission acts quickly upon the NRTC and EchoStar petitions, potentially well over a million current DBS subscribers who receive broadcast network station signals via satellite will lose access to this critical segment of programming. Of equal or greater importance, untold numbers of potential DBS subscribers, who are unable to receive either [sic] an acceptable off-air signal and are precluded from receiving a national satellite feed of network programming, will be forcibly driven into the waiting arms of incumbent cable operators as a result of litigation against PrimeTime 24 involving the Grade B issue that thus far has taken place in federal courts in Miami, Florida and Greensboro, North Carolina. DIRECTV has a vital interest in helping to prevent this result, which will be to the detriment of emerging satellite-based MVPD competition and the public interest.<sup>1</sup>

The satellite carriers apparently fail to understand the message of the PrimeTime 24 litigation: despite the political unpopularity, courts will not tolerate satellite carriers' failure to comply with the law.

No matter how inequitable the satellite companies believe the present rule to be, the potential loss of subscribers resulting from the PrimeTime 24 litigation does not, and cannot, legitimize actions that are inconsistent with the law. The satellite carrier compulsory license establishes a standard — satellite companies may provide secondary transmissions of network station signals to only those households that meet the definition of "unserved households," i.e., homes that do not receive a Grade B signal.<sup>2</sup> The satellite

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<sup>1</sup> Comments of DIRECTV, Inc. in RM No. 9335 and RM No. 9345 (filed September 4, 1998).

<sup>2</sup> See 17 U.S.C. § 119(a)(2).

carriers, by failing to observe that standard, assumed the risk that their actions may result in litigation, a finding of copyright infringement, and the imposition of damages or an injunction.<sup>3</sup> The illegal provision of these signals – in violation of the law and the public policy established by Congress – can provide no meaningful evidence to support any change to that public policy.

If the satellite companies and their subscribers believe so strongly that the current law does not adequately serve to foster competition or the public interest, they must take their case to Congress. Only Congress has the authority to make the changes to the satellite carrier compulsory license that NRTC and Echostar propose.<sup>4</sup> The Commission must therefore deny NRTC's and Echostar's petitions.

**Respectfully submitted,  
SMALL CABLE BUSINESS  
ASSOCIATION**

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<sup>3</sup> See 17 U.S.C. § 119(a)(5).

<sup>4</sup> See Comments of the Small Cable Business Association in RM No. 9335 and RM No. 9345 (filed September 4, 1998); see also Comments of the Network Affiliated Stations Alliance in RM No. 9335 (filed September 4, 1998); Further Response of the National Association of Broadcasters to Emergency Petition for Rulemaking Filed by the National Rural Telecommunication Cooperative in RM No. 9335 (filed September 4, 1998), at 6.

**CERTIFICATE OF SERVICE**

I, Kelly Davis, of Bienstock & Clark, certify that on this 21<sup>st</sup> day of September, 1998, I caused the **REPLY COMMENTS OF THE SMALL CABLE BUSINESS ASSOCIATION** to be sent by First Class Mail to the following:

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